and irrevocable change of position. It seems as if in adopting the English rule as to possession, they had realized its anomalous character and sought to justify it by engrafting upon it the sound principle which underlies the second rule. It is obvious that these rules have nothing in common which logically calls for their combination. The jurisdictions so combining them have greatly increased the uncertainty and confusion which marks this entire branch of equity. Instead of granting relief only in those cases where the agreement would be specifically enforced under either of the original rules, there is a tendency to relax the requirements of both thus taking cognizance of cases which would not properly fall under either. This tendency is well shown by a recent New Jersey case, *Winfield* v. *Bowen* (N. J. 1903) 56 Atl. 728, in which the court decreed the specific performance of an oral agreement to devise a certain house and lot, the plaintiff having occupied the premises with the testator and given her services for a long period of years as the consideration on which the promises was based. In accord are *Warren* v. *Warren* (1883) 105 Ill. 568; *Taft* v. *Taft* (1889) 73 Mich. 502; *Carney* v. *Carney* (1888) 95 Mo. 353; *Vreeland* v. *Vreeland* (1895) 53 N. J. Eq. 387. As has already been pointed out payment of the purchase price, whether it be in money or services is not sufficient under either the first or second rule and such is still the weight of authority where both elements are required. *Edwards* v. *Estell* (1874) 48 Cal. 194; *Grant* v. *Grant* (1893) 63 Conn. 530; *Gorham* v. *Dodge* (1887) 122 Ill. 528; *Johns* v. *Johns* (1879) 67 Ind. 440; *Wallace* v. *Long* (1885) 105 Ind. 522; *Ham* v. *Goodrich* (1856) 33 N. H. 32; *Baldwin* v. *Squier* (1884) 31 Kan. 283; *Russell* v. *Briggs* (1901) 165 N. Y. 500. Nor was the possession of the plaintiff sufficient under the requirement of the English rule that it be notorious and exclusive. *Gregory* v. *Mighell* (1811) 18 Ves. Jr. 328; *Frame* v. *Dawson* (1807) 14 Ves. 386; *Allen's Estate* (Pa. 1841) 1 Watts & S. 383.

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INTRA-STATE RAILROAD CAB SERVICE AS A PART OF INTERSTATE COMMERCE.—The present tendency of the Supreme Court of the United States to restrict the application of the "commerce clause" of the Federal Constitution where the power of taxation of the States is involved is illustrated by a recent case before that tribunal. The Pennsylvania Railroad had established a cab service in New York City for the sole use of its patrons in getting to and from its ferry station before or after its passage across the New Jersey line. The service was conducted at a loss, and merely for the convenience of passengers. The court held that it was not protected from State taxation by the commerce clause. *New York* ex rel. *Penna. R. R. Co.* v. *Knight* (1904) 192 U. S. 21. It is well settled that "commerce among the States" as that term is used in the Constitution includes not only interchange of commodities, but the transportation of passengers as well. *Gibbons* v. *Ogden* (1824) 9 Wheat. 1. Nor is it restricted to the bare crossing of a state line by goods or passengers. The necessary means of effecting such crossing, or a single continuous carriage between points in different states, is included.

*Gloucester Ferry Co.* v. *Pennsylvania* (1884) 114 U. S. 196; *Wabash, St. L. & P. R. R. Co.* v. *Illinois* (1886) 118 U. S. 557. In the principal case it is apparent that the cab service was but one element in the continuous interstate transportation and that the mere fact of a change of vehicle would not prevent it from being within the term "interstate commerce." *Rhodes* v. *Iowa* (1898) 170 U. S. 412. For example, the entire trip, on a through ticket, between New York and Trenton is interstate commerce, though the passenger changes from the ferry to the train at Jersey City. Looking at the case from a different point of view and taking into consideration the fact that this special service was given merely to increase the company's interstate business by offering conveniences to passengers, there being no separate profit in it, the rule laid down in *McCall* v. *California* (1889) 136 U. S. 104, would seem applicable. There an agent in California, engaged in soliciting, not selling, passage on an interstate road in another state, was held to be engaged in interstate commerce.

There is a distinguishing point, however, in the principal case, and one on which the court relied to distinguish it from the ordinary case of continuous transportation. It is that the cab service was separately contracted for, and the test is thereby suggested that though the commerce clause would cover the entire journey where there is one through contract, yet, where there are separate contracts, some to be performed entirely within a state, and some involving the crossing of state lines, it extends only to the latter. Whether the want of this additional element is enough to distinguish the McCall case, supra, may be doubted, but the test of the court suggests a practical working rule, provided it be taken with qualifications. The courts, for example, would hardly allow railroads to evade interstate regulations merely by compelling passengers to make new contracts at every state line. Nor would it be reasonable to say that a party is an interstate passenger merely because he has a through ticket—the additional element that he be engaged in one through trip is necessary. For example, a passenger exercising a stop-over privilege at Worcester, in a trip between New York and Boston, could not properly be said to be an interstate passenger when subsequently resuming his journey between Worcester and Boston. But subject to such modifications, the rule may be accepted, and, in its application, the court is left to answer the question, does the power to tax, as exercised by the state, interfere with a through contract of interstate carriage? If so, the tax is void. It would seem to follow from this test, as applied by the court, that the Railroad, in the principal case, could avoid the state tax by selling through tickets, with a coupon to special points within New York City, making the cab service a part of one through contract. Whether such a contract would be protected from state interference depends on whether the Supreme Court is prepared to follow the contract test to its logical results.